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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 02-136
Table of Allotments,)	RM-10458
FM Broadcast Stations.)	RM-10663
(Arlington, The Dalles, Moro, Fossil, Astoria,)	RM-10667
Gladstone, Portland, Tillamook, Coos Bay,)	RM-10668
Springfield-Eugene, Manzanita and Hermiston,)	
Oregon, and Covington, Trout Lake, Shoreline,)	
Bellingham, Forks, Hoquiam, Aberdeen,)	
Walla Walla, Kent, College Place, Long Beach)	
and Ilwaco, Washington))	

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

OPPOSITION TO APPLICATION FOR REVIEW

Saga Broadcasting, LLC ("Saga"), licensee of KAFE(FM), Channel 282C, Bellingham, Washington, by its attorneys, and pursuant to Title 47 C. F. R. § 1.115, respectfully opposes the "Application for Review" filed August 20, 2004, by Triple Bogey, LLC; MCC Radio, LLC; and KDUX Acquisition, LLC ("Triple Bogey") seeking Commission review of the *Report and Order, Arlington, Oregon, et al.*, DA 04-2054, released July 9, 2004 (69 Fed. Reg. 43534, published July 21, 2004) ("R&O"). For the reasons set forth herein the action taken under delegated authority in the R&O should be affirmed. Triple Bogey has failed to show why the R&O should be changed. In opposition, Saga shows the following:

Background

The Audio Division issued to Saga Broadcasting Corp.¹ an *Order to Show Cause*,

¹ As has been noted in other pleadings, the license of KAFE was the subject of a *pro*

DA 04-607, released March 12, 2004, that afforded Saga until April 26, 2004, within which to show cause why the KAFE license should not be modified as proposed in Triple Bogey's Counterproposal to relocate Station KDUX-FM, to Shoreline, Washington. In response to the *Order to Show Cause*, Saga withdrew its consent to utilize a directional antenna to protect Canadian allotments. Mid-Columbia Broadcasting, Inc., and First Broadcasting Company, L. P. ("Joint Petitioners") withdrew their proposal to relocate KMCQ(FM) from The Dalles, Oregon, to Kent, Washington, and requested that the Commission consider their original proposal to reallocate Channel 283C3 from The Dalles to Covington, Washington, and modify the Station KMCQ license to specify Covington as the new community of license.

In the R&O, the Audio Division dismissed the Triple Bogey Counterproposal on these grounds:

The withdrawal of the Saga Broadcasting consent to utilize a directional antenna in order to modify its Station KAFE license is fatal to the Triple Bogey Counterproposal. We will not require a licensee to involuntarily relocate its transmitter site or install a directional antenna.² Requiring a station to involuntarily install a directional antenna that would, in fact, protect certain allotments poses unique and significant administrative difficulties for the licensee, the initiating party, and the Commission staff.

¹ *Wasilla, Anchorage and Sterling, Alaska*, 14 FCC Rcd 6263 (MMB 1999).

It is this dismissal of which Triple Bogey seeks Commission review. Triple Bogey's Application for Review must be dismissed or denied. Its Counterproposal was defective and the Audio Division had no choice except to dismiss it.

Triple Bogey Has Presented No Grounds to Justify Review

forma assignment of license (BALH-20030612AJN) from Saga Broadcasting Corp. to Saga Broadcasting, LLC.

In general, Saga opposes Triple Bogey's Application for Review; in particular, Saga focuses its attention on pages 19-25 thereof, which deals with KAFE. Triple Bogey argues that "under the particular circumstances of this case," the fact that KAFE might need to use a directional antenna should not result in dismissal of Triple Bogey's proposal. But Triple Bogey has utterly failed to show why this might be so.

Triple Bogey had a procedural choice to make on August 20, 2004, the 30th day following public notice of the action taken in the R&O. It could file a petition for reconsideration under Section 1.429 of the Rules, as another party³ did, or Triple Bogey could file an application for review in compliance with Section 1.115(b)(2) which requires the pleader to "specify with particularity, from among the following, the factor(s) which warrant Commission consideration of the questions presented:"

(i) The action taken pursuant to delegated authority is in conflict with statute, regulation, case precedent, or established Commission policy;

(ii) The action involves a question of law or policy which has not previously been resolved by the Commission;

(iii) The action involves application of a precedent or policy which should be overturned or revised;

(iv) An erroneous finding as to an important or material question of fact; or

(v) Prejudicial procedural error.

Although Triple Bogey has argued strenuously that its defective counterproposal should be reinstated, Triple Bogey has not shown how its request meets any of the factors warranting review. The Audio Division's action taken pursuant to delegated authority did not conflict with statute, regulation, case precedent, or established Commission

policy. In fact it was in harmony with the precedent in *Wasilla, Anchorage and Sterling, Alaska*, 14 FCC Rcd 6263 (MMB 1999). The action does not involve a question of law or policy which has not previously been resolved by the Commission (see *Wasilla, supra.*) The action does not involve a precedent or policy which should be overturned or revised. There was no erroneous finding as to an important or material question of fact. And, there was no prejudicial procedural error.

Instead of meeting its burden, Triple Bogey erects a smoke screen. Triple Bogey cites a number of cases to prove the obvious; i.e., that directional antennas can be used to protect Canadian stations. But Triple Bogey is unpersuasive when it argues that *Wasilla, Alaska*, is not on point. It clearly is, and Triple Bogey has cited no case to the contrary.

Triple Bogey criticizes the Audio Division for refusing to accept its Counterproposal on the grounds that forcing Saga to install a directional antenna “poses unique and significant administrative difficulties for the licensee, the initiating party, and the Commission’s staff.” According to Triple Bogey, the R&O gave “no hint what those administrative difficulties may be.” It is truly hard to fathom such disingenuity coming from an experienced broadcaster. Triple Bogey knows, or ought to know, what kinds of difficulties are posed in determining the value of lost coverage. Attached is a technical statement from Saga’s technical consultant opining that in FM engineering matters, a nondirectional antenna is always preferred to a directional antenna because the directional antenna always involves the loss of signal strength in some direction. The “administrative difficulties” would include a determination of the valuation of that loss even in the “very narrow” circumstances Triple Bogey would have the Commission believe are present here. Triple Bogey cites Section 73.215 of the rules whereby

³ Mercer Island School District.

applicants “commonly employ directional antennas to provide contour protection.”

Certainly they do, and often they do it pursuant to an agreement. Station A may desire to upgrade and is able to persuade Station B to downgrade or install a directional antenna to accommodate Station A. Often this is done pursuant to an agreement whereby Station B is compensated for the cost of making the change and for the loss of its signal coverage. If Station A is able to reach with its modified facilities a significantly larger population as a result of Station B’s change, the amount of compensation may be tied to the benefit to Station A. However, the Commission obviously doesn’t want to get involved in the negotiations or setting the amount of compensation in such cases. The Commission has already been down that road in the cases following *Circleville, Ohio*, 8 FCC 2d 159 (1967), cited by Triple Bogey, where only a channel change using the station’s existing transmitter site is necessary. In sharp contrast to the directional antenna Triple Bogey wants to foist upon Saga, there is no change in equivalent coverage when only the operating channel is changed. The matter of reimbursement comes down to the cost of replacing equipment to permit the station to operate on the new channel and the cost of publicizing the change. Even then, the Commission has tried mightily to avoid making *Circleville* determinations, urging the stations to work out the amount of compensation between themselves. A quick review of *Circleville* and its progeny will provide Triple Bogey the “hint” it seeks. It is Commission policy that the proper amounts of reimbursement for the reasonable cost of changing frequency must be the subject of negotiation between the parties involved according to the guidelines set forth in *Circleville*. Once a construction permit has been granted, the Commission expects parties to negotiate in good faith, subject to Commission review in the event of a disagreement.

Mayfield and Wickliff, Kentucky, 48 RR2d 1232 (1981). In that case, the licensee whose facilities would have to be modified in order to change its broadcasting frequency contended that its antenna needed to be replaced, which it estimated would cost approximately \$ 34,500 (in 1981 dollars). The party requiring the change contended that the existing antenna could be field tuned without removal from the tower, which would cost substantially less. The changing licensee requested a hearing on the issue of what constitutes "reasonable reimbursement" in this case. The Commission refused to get involved at that point, calling the matter premature:

Even if there is a continuing disagreement over the matter, there is no reason to hold a hearing to determine what constitutes a reasonable reimbursement. At this point, there is no certainty over who would be the party to provide the reimbursement. Such reimbursement of expenses is governed by the guidelines set forth in such cases as *Circleville, Ohio, supra*, at 163-64 and is generally left to the good faith negotiation of the parties involved, subject to Commission review in the event of disagreement. Thus, once a permit is awarded..., the [parties] will be expected to engage in good faith discussions regarding [the changing station's] necessary expenses in changing frequencies. If the parties cannot agree, the Commission can then consider the issue, rather than now when it is premature.

The Commission can be forgiven if it would rather not get into the business of resolving disputes over the value of a station's coverage area. Triple Bogey's concern is not the public interest; on the contrary, it is its private interest if it can improve the facilities of KDUX-FM. Boiling this down to the basics, Triple Bogey did not cite any precedent (as there is none) for forcing another broadcaster to modify its facilities by installing a directional antenna and change channels to meet Triple Bogey's own business plan for KDUX-FM. Both Triple Bogey and Joint Petitioners realized that Saga held the key to their respective proposals. Triple Bogey and Joint Petitioners negotiated with Saga for its agreement to voluntarily modify its facilities for KAFE and provide the

key. Based on a number of factors, Saga chose to do business with Joint Petitioners. The Audio Division rightly refused to force Saga to enter into a business arrangement with Triple Bogey, and Triple Bogey has failed to show why the Commission should reverse the Audio Division's refusal. The Commission should deny Triple Bogey's Application for Review.

Respectfully submitted,
SAGA BROADCASTING, LLC

By:

A handwritten signature in black ink, appearing to read 'Gary S. Smithwick', written over a horizontal line.

Gary S. Smithwick
Its Attorney

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September 7, 2004

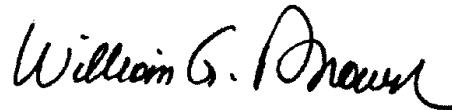
Technical Statement
in Opposition to
Application for Review

William G. Brown, under penalty of perjury, declares as follows:

I am technical consultant for Saga Broadcasting, LLC, licensee of KAFE, Bellingham, Washington. My qualifications are a matter of record with the Commission. I have been engaged in providing technical consulting services since 1959 and since 1980 through Bromo Communications, Inc., of which I am president. I have designed many FM directional antenna systems for my clients.

It is my professional opinion that in FM engineering matters, a nondirectional antenna is always preferred to a directional antenna because the directional antenna always involves the loss of signal strength in some direction. The loss of signal strength results in the loss of coverage in the direction in which the signal is suppressed.

Executed this 7th day of September, 2004.



William G. Brown

CERTIFICATE OF SERVICE

I, Sherry Schuneman, a secretary in the law firm of Smithwick & Belendiuk, P.C., do hereby certify that I have on this 7th day of September, 2004, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "Opposition to Application for Review" to the following:

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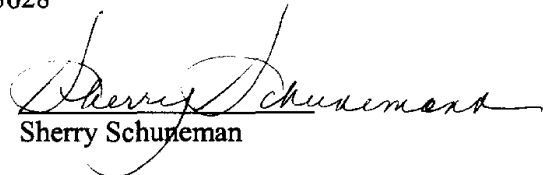
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